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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HARRIS, CHANDA L

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 05/07/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/941,251

Applicant(s)

BANERJEE ET AL.

Examiner

Chanda L. Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 43-45 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 43-45 recites the limitation "the method of claim 42" (Claims 43-44) and "the method of claim 29" (Claim 45) in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 6, 9-10, 12, 14-15, 22, 29, 32-33, 35, 37-38, 45-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Remschel (US 6,208,832).

1. [Claims 6, 29,46]: Regarding Claims 6,29, and 46, Remschel discloses administering a test to a remotely located user (i.e. over a network or the

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internet) of a client device. See Col.12: 29-33. Remschel discloses receiving test question timing data from the client device, the test question timing data representing an elapsed time used in attempting to answer the test question; and outputting to a proctor device (i.e. response analyzer window) such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user (i.e the amount of time that has elapsed since the start of the current question). See Col.12: 55-63. Remschel discloses a controller (e.g. via control panel (30)) and at least one interface (i.e. control panel) coupled to the controller, wherein the controller administers a test to a remotely located user of a client device via at least one interface, receives test question timing data from the client device via the at least one interface, the test question timing data representing an elapsed time used in attempting to answer the test question, and outputs the test question timing data to a proctor device (i.e. response analyzer) via the at least one interface, such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user See FIG. 1 and FIG.19. Remschel discloses a processing unit connected to the bus system, wherein the processing unit executes the set of instructions to identify presentation of the test questions on the data processing system, monitor test question timing data in response to the presentation of the test questions on the data processing system in which the test question timing data represents an elapsed time since an answered question from the test questions has been presented. See FIG. 19.

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2. [Claims 9,32]: Regarding Claims 9 and 32, Remschel discloses sending an instant message (i.e. group call) to the client devices. See Col.8: 41-45.
3. [Claims 10,33]: Regarding Claims 10 and 33, Remschel discloses receiving an instant message from the client device (e.g. by permitting transmission to the teacher of the selected students' voices). See Col.8: 48-53.
4. [Claims 12,35]: Regarding Claims 12 and 35, Remschel discloses storing a score for the test in a permanent storage (i.e. stored in memory or in a file in a storage device). See Col.14: 29-39.
5. [Claims 22,45]: Regarding Claims 22 and 45, Remschel discloses storing of timing data for the test question to update timing data for the remotely located user for use in future tests. See Col.12: 55-63. The intended use "for use in future tests" does not further limit the invention as claimed.
6. [Claims 14,37]: Regarding Claims 14 and 37, Remschel discloses receiving a request for administration of the test to the remotely located user (i.e. "START QUESTION"); establishing a session identification (i.e. "QUESTION NUMBER") for the administration of the test to the remotely located user; and correlating the test question timing data to the administration of the test to the remotely located user based on the session identification. See FIG.19.
7. [Claims 15,38]: Regarding Claims 15 and 38, wherein the session identification includes a proctor device identifier, and wherein outputting the test question timing data to the proctor device is based on the proctor device identifier would have been an inherent feature of Remschel's invention as there has to be

some type of identification between devices in order for them to be able to communicate with each other.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-5, 7, 11, 13, 16-21, 23-24, 26-28, 30, 34, 36, 39-44, and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Remschel in view (Walker et al. 6,093,026).

1. [Claims 1,23,28,34,47,49]: Regarding Claims 1,23, 28, 34, 47, and 49, Remschel discloses identifying presentation of test questions on the data processing system. See Col.2: 17-22. Remschel discloses monitoring test question timing data in which the test question timing data represents. See Col.2: 33-39. Remschel discloses an elapsed time since an answered question from the test question has been presented (i.e. the elapsed time since the start of the current question). See Col.12: 55-63. Remschel discloses a bus system (i.e. connecting cable) and a communications unit connected to the bus system (i.e. communication router). See FIG. 1. Memory including a set of instructions would have been an inherent feature of Remschel's invention.

Remschel does not disclose expressly generating an alert (i.e. fraud signal) after the test question timing data exceeds a threshold (i.e. predetermined threshold). However, Walker teaches such in Col.10: 38-42. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the method and system of Remschel generating an alert after the test question timing data exceeds a threshold, in light of the teaching of Walker, in order to inform of inconsistencies in responding to test questions.

2. [Claims 2,24,48]: Regarding Claims 2,24, and 48, Remschel discloses wherein the monitoring step is performed by a proctor device or a program on the data processing system (i.e. companion software). See Col.8: 58-61.

3. [Claims 4,26]: Regarding Claims 4 and 26, Remschel does not disclose expressly billing a client for monitoring the presentation of test questions (i.e. billing information). However, Walker teaches such in Col.4: 33-40. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate into the method and system of Remschel billing a client for monitoring the presentation of test questions, in light of the teaching of Walker, in order to charge the client for tests conducted on its behalf.

4. [Claims 5,16,27,39,50]: Regarding Claims 5,16, 27, 39, and 50, Remschel does not disclose expressly storing an identification of a number of test takers for the test; and billing a client based on the number of test takers for the test.

However, Walker teaches billing a client for surveys conducted on its behalf in Col.4: 33-39. It is obvious that the charge to the client would have been

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somehow determined by the quantity of surveys administered. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill to incorporate the aforementioned limitation into the method and system of Remschel, in light of the teaching of Walker, in order to specify how the client is to be charged for tests conducted on its behalf.

5. [Claims 7,30]: Regarding Claims 7 and 30, Remschel does not disclose expressly billing a test developer (i.e. client) for administration of the test to the remotely located user. However, Walker teaches such in the Abstract and in Col.4: 33-39. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate into the method and system of Remschel, billing a test developer for administration of the test to the remotely located user in order to charge the test developer for tests conducted on its behalf.

6. [Claims 11, 20,43]: Regarding Claims 11,20, and 43, Remschel does not disclose expressly alerting (i.e. sending a message of reprimand) the remotely located user when the test question timing data exceeds a predetermined threshold. However, Walker teaches such in Col.11: 35-38. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the aforementioned limitation into the method and system of Remschel, in light of the teaching of Walker, in order to inform the user of fraud.

7. [Claims 13,36]: Regarding Claims 13 and 36, Remschel does not disclose expressly wherein the test is developed by a test developer (i.e. client) and wherein the method is implemented by a test administration system that is

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operated by a different entity from the test developer. However, Walker teaches such in Col.4: 33-47. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into the method and system of Remschel, in light of the teaching of Walker in order to enable a test administration system to conduct tests on the test developer's behalf.

8. [Claims 17-18, 40-41]: Regarding Claims 17-18 and 40-41, Remschel does not disclose expressly wherein monitoring the test question timing data for evidence of greater than expected response time to the test question includes comparing previously received test question timing data to currently received test question timing data to determine if a change in the test question timing data indicates evidence of greater than expected response time to the test question. However, Walker teaches comparing previously received test question data to currently received test question timing data (i.e. the time it takes a respondent to provide responses to a plurality of respondent questions) See Col.10: 51-53. Therefore, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into the method and system of Remschel, in light of the teaching of Walker, in order to apply an inconsistency test to responses. Remschel/Walker does not disclose expressly monitoring the test question timing data for evidence of greater than expected response time to the test question, wherein the outputting the test question timing data to a proctor device is performed in response to determining that evidence of greater than expected response time to the test question is present. However, Walker

teaches monitoring for evidence of less than an expected response time (i.e. predetermined threshold) in Col.10: 38-41. Therefore, it would have been obvious at the time of the invention that it would have been an obvious matter of design choice as to whether to monitor for greater than or less than an expected response time wherein no stated problem is solved or unexpected result obtained by monitoring for evidence of a greater than expected response time to the question.

9. [Claims 19, 42]: Regarding Claims 19 and 42, Remschel does not disclose expressly generating an alert profile for the remotely located user for a particular test based on at least one of a data profile associated with the remotely located user, an examination question timing database, and a degree of difficulty associated with a question on the test. However, Walker teaches generating an alert profile for the remotely located user based on a data profile associated with the remotely located user (e.g. all responses are the first response choice). See Col.11: 14-18. Therefore, at the time of the invention, it would have been obvious to incorporate the aforementioned limitation into the method and system of Remschel, in light of the teaching of Walker in order to determine whether the responses define a predetermined pattern.

10. [Claim 21]: Regarding Claim 21, Remschel does not disclose expressly storing a response from the remotely located user to update the alert profile for use in future tests (e.g. barring the respondent from future participation in tests). However, Walker teaches such in Col.11: 35-50. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to

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incorporate the aforementioned limitation into the method and system of Remschel, in light of the teaching of Walker, in order to determine payment due to the user.

11. [Claim 44]: Regarding Claim 44, Remschel discloses storing of timing data for the test question to update timing data for the remotely located user for future tests. See Col.12: 55-63. The intended use "for future tests" does not further limit the invention as claimed.

Claims 3 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Remschel in view of Walker as applied to claims 1-2, 4-5, 7, 11, 13, 16-21, 23-24, 26-28, 30, 34, 36, 39-44, and 47-50 above, and further in view of Sugimoto (US 2002/0102522).

[Claims 3,25]: Regarding Claims 3 and 25, Remschel/Walker does not disclose expressly wherein the program is an applet. However, Sugimoto teaches such on p.2, [0038]. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate an applet into the method and system of Remschel/Walker, in light of the teaching of Sugimoto, in order to display time elapsed or notify time elapsed via voice.

Claims 8 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Remschel.

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[Claims 8,31]: Regarding Claims 8 and 31, Remschel does not disclose expressly billing the remotely located user for the administration of the test. However, such is old and well known in the art (e.g. computerized SAT, Greening, etc.). Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate billing the remotely located user for the administration of the test into the method and system of Remschel, in order to collect payment for providing testing services.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- New, III (US 6,155,834)
-interactive testing.
- Greene et al. (US 2002/0172931)
-monitoring of testing environments
- Thomas (US 5,618,182)
-elapsed time
- Collins et al. (US 5,577,919)
-time limit
- Sonnenfeld (US 6,112,049)
-computer-based testing system
- Ditto (US 6,270,352)
-adaptive problem selection

- Raichur et al. (US 2001/0034015)
 - elapsed time
- Walker et al. (US 5,947,747)
 - computer-based educational testing
- Elliot et al. (US 6,431,875)
 - administering tests over a network
- Blevins et al. (US 2002/0076684)
 - computer-based learning system
- Wallace et al. (US 2002/0160347)
 - elapsed times

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 703-308-8358. The examiner can normally be reached on M-F 6:30am-4:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ch

ch.

April 30, 2003


S. THOMAS HUGHES
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